

Filed

Dec 17 2007

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

1 Ignacio Polvos Pena, D-17862
 Calif. State Prison-Solano 15-E2-L
 2 Post Office Box 4000
 Vacaville, Calif. 95696-4000
 3 Petitioner/Pro Se

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

7 IGNACIO POLVOS PENA,) No. C 07-03056 JW (PR)
8 Petitioner,) PETITIONER'S OPPOSITION TO RESPONDENT'S
9 vs.) MOTION TO DISMISS; WITH REQUEST FOR
10 D.K. SISTO, WARDEN,) LEAVE OF COURT TO FILE LATE OPPOSITION
11 Respondent.) TO RESPONDENT'S MOTION; PURSUANT TO
) FED.R.CIVIL P. 6.
)
)
)
)

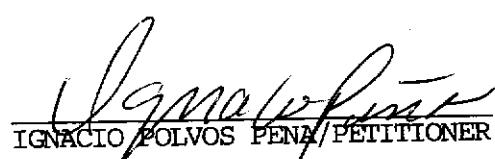
Petitioner, Ignacio Polvos Pena, (Petitioner) a state prisoner incarcerated at the California State PrisonSolano in Vacaville, California, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging the California Board of Parole Hearing's ("BPH") November 18, 2002, decision to deny him parole. Petitioner has paid the filing fee. Petitioner request this court grant leave of court to file late opposition to Respondent's motion to dismiss. Petitioner mistakenly believed, the Court's Order To Show Cause filed on July 31, 2007, gave him sixth days (60) of receipt of the Respondent's motion to file an opposition. Petitioner has had difficulty acquiring the necessary information that demonstrates his due diligence in prosecuting his claims that were impeded by state-appointed attorney in his habeas corpus proceedings that issued an Order To Show Cause. (See Exhibit 1, p. 1.) Petitioner submits documents to this court to take judicial notice pursuant to Fed.R.Evid. 201, of letters, order of Superior Court of California, County

1 of Santa Clara, and The State Bar of California letter and Inquiry Number:
 2 05-9047. Petitioner, declare under penalty of perjury that the time between
 3 his superior court denial on March 25, 2005, the request for reconsideration
 4 (see Exhibit 2, p. 1) and his appellant court filing on November 2, 2005, was
 5 due to his state-appointed attorney's failure to send his case file and
 6 paperwork relating to the habeas corpus petition. Petitioner pursued the matter
 7 with his attorney as instructed by the state trial court. (See Exhibit 3, p.
 8 1, letter to attorney) Petitioner then contacted The State Bar of California
 9 on June 5, 2005. (See Exhibit 4, p. 1) It took Petitioner's attorney over
 10 five months to forward him his case file and paperwork. Petitioner would like
 11 to also mention that his case was dismissed with prejudice on March 23, 2007,
 12 because Petitioner did not apply for leave to proceed in forma pauperis nor
 13 pay the filing fee. The Petitioner in that situation had sent the notice that
 14 he must pay the filing fee within thirty days or the case would be dismissed
 15 to his Uncle who had failed to pay the fee has he had promised Petitioner.
 16 Petitioner did not learn of his failure to pay the fee until the March 23,
 17 2007 order of this court. (See Case No. C 06-07344 JW (PR).)

18 For the foregoing reasons Petitioner respectfully request that this court
 19 hear this case on the merits. Also, order that Respondent file with the court
 20 and serve on Petitioner, within the time given an answer conforming in all
 21 respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause
 22 why a writ of habeas corpus should not be issued. The post-plea constitutional
 23 violation of Petitioner's plea agreement does not ripen with time.

24 I, Petitioner: Declare under penalty of perjury that the foregoing is
 25 true and correct. Executed on this Date:

26
 27 December 11, 2007.


 IGNACIO POLVOS PENA/PETITIONER

1 CERTIFICATE OF SERVICE
2

3 CASE NO.: 07-03056 JW (PR)
4

5 CASE NAME: IGNACIO POLVOS PENA vs. SISTO, WARDEN
6

7 I hereby certify that I am the Petitioner in this case and that on December
8 11, 2007, I served a copy of the Petitioner's Opposition To Respondent's Motion
9 To Dismiss; With Request For Leave Of Court To File Late Opposition To
10 Respondent's Motion; Pursuant To Fed.R.Civ.P. 6., the following:
11

12 Denise A. Yates, Deputy Attorney General
13 455 Golden Gate Avenue, Suite 11000
14 San Francisco, CA 94102-7004
15

16 I declare that the foregoing is true and correct.
17

18 Date: December 11, 2007
19

20 
21 IGNACIO POLVOS PENA/PETITIONER
22

F
MAR
KIRI
Chief Executive Officer
Superior Court of CA, County of Santa Clara
Kirli Condron

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

No.: 96973
ORDER
Petitioner)
IGNACIO POLVOS PENA,)
On Habeas Corpus)

The request for reconsideration is denied. The recent case of *In re Dannenberg* (2005) 34 Cal.4th 1061, provides further support for the final order issued in this case.

Regarding Petitioner's request for his case file and paperwork relating to the petition, Petitioner must further pursue the matter with his attorney. Court involvement is not warranted at this time.

DATED: 3/25, 2005

Linda B. Condron
LINDA CONDRON
JUDGE OF THE SUPERIOR COURT



cc: Petitioner (at CSP Solano)
Petitioner's Attorney (Jack Gordon)
Attorney General (Brian Walsh)
District Attorney (Margo Smith)
Research

IGNACIO POLVOS PENA, D-17862
CA. STATE PRISON SOLANO 15-W4L
P.O BOX 4000
Vacaville, CA. 95696-4000

APRIL 17, 2005

JACK GORDON, ATTORNEY AT LAW
95 S. MARKET STREET, SUITE 300
San Jose, CA. 95113

Dear Attorney, Mr. Gordon,

I am proceeding with my litigation. I have informed the Court that I need all file and materials which you have in your possession pertaining to me and my legal case.

The Court advised me, in the Court's order filed March 30, 2005, to contact you and request that you send to me all files you have regarding my case.

In keeping with the Court's advisement, I request you send to me the case file and paperwork relating to my petition.

It would be greatly appreciated if you could send the requested documents as soon as possible.

As this is my fourth attempt at requesting that you send copies of my paperwork and my case file, I am left with no other alternative but to make a formal complaint to the California Bar Association and other officials, if my documents aren't forwarded to me soon. I hope you are familiar with the Government Code which is controlling in this instance.

Thank you in advance for alleviating this problem and sending me my case file and paperwork.

Sincerely,


IGNACIO P. PENA D-17862

cc: Petitioner (at CSP-Solano)

EXHIBIT 2 PAGE 1

IGNACIO POLVOS PENA, D-17862
CSP-Solano 15-W4L
P.O. Box 4000
Vacaville, CA. 95696-4000

June 5, 2005

THE STATE BAR OF CALIFORNIA
1149 South Hill Street
Los Angeles, CA. 90015-2299

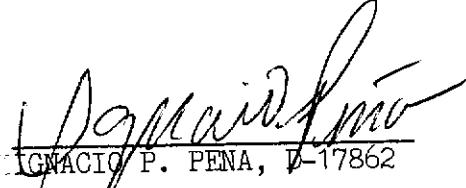
To Whom this may concern,

Enclosed are copies of letters I have written to Attorney at Law Mr. Jack Gordon.
Mr. Gordon was appointed by the court to my case No. 96973.

As you may notice I have tried through letters and in many times through phone calls to obtain, and requested copies of my legal documents. Mr. Gordon have failed to provide my file. I even have filed a Motion to obtain my transcripts. See attached copies of court response. If you have any questions, please contact me.

Thank you for your time and consideration.

Sincerely,



IGNACIO P. PENA, D-17862



THE STATE BAR
OF CALIFORNIA

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

OFFICE OF THE CHIEF TRIAL COUNSEL
INTAKE

TELEPHONE: (213) 765-1000
TDD: (213) 765-1566
FAX: (213) 765-1168
<http://www.calbar.ca.gov>

November 30, 2007

Ignacio P. Pena, D-17862
CSP-Solano 15-W4L
P.O. Box 4000
Vacaville, CA 95696-4000

RE: Inquiry Number: 05-9047
Respondent: Jack D. Dennis

Dear Mr. Pena:

Pursuant to your telephone call on November 28, 2007, we are sending you the information that you requested. The State Bar has determined to send you the original copies of the requested information, and we will maintain copies of said information in our files.

Thank you for your understanding.

OFFICE OF THE CHIEF TRIAL COUNSEL/INTAKE

EXHIBIT 4 PAGE 1

DEC 17 2007

Filed

1 **PROOF OF SERVICE BY MAIL**
2 **BY PRISONER "IN PRO PER"**

DEC 17 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

I hereby certify that I am over the age of 18 years of age, that I am representing myself, and that
I am a prison inmate.

My prison address is: California State Prison - Solano
Housing: 15-E2Low
P.O. Box 4000
Vacaville, California 95696-4000

On the "date" specified below, I served the following document(s) on the parties listed below by
delivering them in an envelope to prison authorities for deposit in the United States Mail pursuant to
the "Prison Mailbox Rule":

Case Name: IGNACIO PENA v. D.K. SISTO, WARDEN Case #: C 07-3056 JW (PR)

Document(s) Served: PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION

TO DISMISS; WITH REQUEST FOR LEAVE OF COURT TO FILE LATE OPPOSITION

TO RESPONDENT'S MOTION ; PURSUANT TO FED.R.CIVIL P. 6.

The envelope(s), with postage fully pre-paid or with a prison Trust Account Withdrawal Form
attached pursuant to prison regulations, was/were addressed as follows:

DEPUTY ATTORNEY GENERAL
455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA. 94102-7004

NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA. 94102

I declare under penalty of perjury that the foregoing is true and correct. This declaration was
executed on Dec. 11, 2007, in Vacaville, California.

26 "date"

27 Signature: Ignacio Pena

28 Printed Name: IGNACIO PENA